

REMARKS

Applicant respectfully requests reconsideration of the application in view of the foregoing amendments and following remarks.

Claims 1, 3, 7, 8, and 11 have been amended. New claim 41 has been added. Claims 30-33 have been canceled. Accordingly, claims 1-29 and 34-41 remain pending in the application.

Response to Restriction Requirement

The Examiner has issued a restriction/election of species requirement. Specifically, the Examiner contends that restriction to one of the following inventions is required under 35 U.S.C. § 121: Group I (claims 1-12 drawn to a blending station apparatus), Group II (claims 13-29 and 34-40 drawn to a method of preparing a beverage), and Group III (claims 30-33 drawn to a peristaltic pump). Applicant does not contest the restriction requirement with respect to the peristaltic pump. Accordingly, Applicant has canceled claims 30-33, without prejudice. Applicant traverses, however, the restriction requirement with respect to the method claims drawn to a method of preparing a beverage.

The Examiner appropriately notes that the inventions *can* be shown to be distinct *if* the process for using the apparatus as claimed can be practiced with another *materially* different apparatus or the apparatus as claimed can be used in a materially different process of using that apparatus. The Examiner specifically states that "[i]n this case the apparatus of group I can be used to practice another and materially different process from that of group II, such as blending of other materials not limited

to just foods or not automatically introducing foods upon request." The Examiner has failed to carry his burden to show that the apparatus as claimed can be used in a *materially* different process. The burden falls squarely on the shoulders of the Examiner to establish that restriction is proper. The Examiner has failed to establish any alleged materiality with respect to the *lack of* any of the claimed method steps. To be sure, claim 13 recites, *inter alia*, the following:

providing a blending container;

providing a blending location sized to receive a blending container;

providing at least one foodstuffs supply line carrying a foodstuffs at the blending location;

providing a blending device mounted to the blending station apparatus at the blending location;

directly and automatically introducing the foodstuffs into the blending container upon request;

blending the foodstuffs introduced into the blending container.

Claim 24 recites the elements of a blending container and beverage ingredients in combination with the claimed blending method. Therefore, the method steps require certain elements common to the elements recited in the apparatus claims. Therefore, the Examiner's asserted basis for restriction is clearly improper.

Furthermore, it is inherent in any restriction requirement that, to be proper, there must be an extra burden placed upon the Examiner to search all of the claims in the pending application. In the instant case, there is simply no extra burden placed on the Examiner with respect to the invention as recited in claims 13 and 24 (and their independent claims). Indeed, all of the potentially pertinent blending devices that could

be used to perform the method steps recited in claims 13 and 24 will necessarily have to be reviewed by the Examiner in conjunction with the apparatus claims. Accordingly, there is simply no extra burden placed on the Examiner in terms of searching the invention if the Examiner were to review the method claim as recited.

In view of the foregoing, Applicant respectfully requests the Examiner to withdraw the restriction requirement and examine all claims pending in the application.

Response to Claim Objections

The Examiner has objected to claim 1 based upon the recitation, on line 4, of the claim term "a foodstuffs." Applicant respectfully submits that the claim term "a foodstuffs" may be specified in the singular, and therefore the words "a foodstuffs" are properly recited in the claim. Applicant therefore respectfully requests reconsideration of this rejection. If, however, Applicant is incorrect with respect to the appropriate grammatical usage of the claim term "a foodstuffs," Applicant will be pleased to amend the claim.

Response to Rejections Under 35 U.S.C. § 102

The Examiner has rejected claims 1-7, 9, and 12 as being anticipated by U.S. Patent No. 5,619,901 to Reese et al.

As the Examiner undoubtedly understands, an anticipation rejection is proper only if a single prior art reference discloses each and every element recited in a particular claim.

Claim 1 has been amended to recite "a pump operatively coupled to the foodstuffs supply line to introduce the foodstuffs into the blending container." There is no teaching or suggestion in the Reese et al. patent of any type of pump device. Rather, each of the containers 20 (Fig. 4) rely on a gravity feed to dispense foodstuffs into the blending container or jar 13. As discussed below, the Reese et al. patent cannot be modified to include a pump without destroying the key function of the device relating to "precise portion control." Applicant respectfully submits, therefore, that claim 1, as amended, should now be in condition for allowance.

Claim 3 is now presented in independent form, but without any substantive amendments relating to patentability. Specifically, in combination with original claim 1, there is no teaching or suggestion in Reese et al. to disclose "a water supply to selectively and automatically introduce water into the blending container upon request." Applicant has determined that introduction of water *directly into the blending container* is required to achieve the right type of texture for certain types of beverages. There is no teaching or suggestion in Reese et al. of a water supply to selectively and automatically introduce water into the blending container upon request. Accordingly, claim 3 as originally presented should be in condition for allowance.

Claim 7 is now also presented in independent form, but without any substantive amendments relating to the patentability of the invention. Specifically, claim 7 calls for "a refrigeration system to maintain the foodstuffs supply line refrigerated." The present invention allows for the processing of foodstuffs that require refrigeration. Fresher, better textured refrigerated ingredients can therefore be used in connection with the present invention, rather than the mandatory shelf-stable products used in a blending

device such as the Reese et al. device. Accordingly, there is no teaching or suggestion in Reese et al. of the invention as recited in claim 7. Claim 7 should therefore be in condition for allowance.

Claim 11 is now presented in independent form, but without any substantive amendments relating to patentability. Claim 11 recites "a peristaltic pump operatively coupled to the foodstuffs supply line . . ." As mentioned, the Reese et al. patent neither teaches nor suggests a pump utilized in association with its blending device and associated gravity-feed foodstuffs supply bins. Accordingly, for the reasons stated above and below, modifying the Reese et al. device to include a pump of any kind would destroy a critical feature of the Reese et al. device which allows for "precise portion control." Accordingly, claim 11 should be in condition for allowance.

Claims 4-6, 9, and 12 depend from claim 1 and, based upon the amendment to claim 1, should be in condition for allowance.

Response to Rejections Under § 103

The Examiner has rejected claims 8 and 10 as being unpatentable over Reese et al. The Examiner admits that the Reese et al. patent does not recite "a cleaning location with a liquid."

Applicant has amended claim 8 to place it in the form of an independent claim, but has not made any substantive amendments relating to the patentability of claim 8. Rather, claim 8 is presented substantively in its original "as filed" form. Claim 8 recites "a cleaning location sized to receive the blending container" and "a cleaning liquid supply line provided at the cleaning location to automatically clean the blending

container when placed within the cleaning location.” Applicant claims a complete blending station apparatus, including a cleaning location, in accordance with the present invention. The cleaning location provides substantial and significant benefits to the user because of the increased efficiency with which beverages may be blended and ready for dispensing at the blending station.

As the Examiner is undoubtedly aware, claim limitations cannot be ignored. There is absolutely no teaching or suggestion in Reese et al. of any type of cleaning location. If, as the Examiner contends, it would have been “obvious to one of ordinary skill in the art to provide a sink with warm water in the invention of Reese et al.,” Applicant respectfully requests the Examiner to point out specifically where such teaching or suggestion is found in Reese et al. or in the prior art which discloses a “sink with warm water.” Even then, Applicant does not claim a “sink with warm water,” as stated by the Examiner, but rather a cleaning location and a cleaning liquid supply line provided at the cleaning location to automatically clean the blending container when placed within the cleaning location. Applicant respectfully submits that claim 8, as originally presented, should be in condition for allowance.

Claim 10 depends from claim 1. Given the amendments to claim 1, Applicant respectfully submits that claim 10 should now also be in condition for allowance.

The Examiner has rejected claim 11 as being obvious over Reese in view of U.S. Patent No. 6,326,047. The Examiner indicates that it would have been obvious to a person of ordinary skill in the art to incorporate the peristaltic pump of Ferrell into the invention of Reese et al. since both “are directed to blending devices, since Reese et al. already includes liquid supply sources.” and, according to the Examiner, “since the

peristaltic pump of Ferrell was a commonly known means to providing metered supply of liquid as shown by Ferrell."

Applicant respectfully submits that the combination of Ferrell and Reese et al. is improper. As the Examiner undoubtedly understands, references cannot be combined if the proposed combination would destroy the function of the reference to be modified.

With respect to the Reese et al. device, one of its primary purposes is to "assure precise portion control." (See Abstract; Summary of Invention - Col. 1, lines 63-67).

As stated in Reese et al.:

An *important feature* of the present invention -- previously not available in the prior art -- is precise portion control of the beverage or drink mix being dispensed.

This *important feature* is shown more clearly in Figs. 10A-10C. In Fig. 10A, the piston subassembly 43 is in its lowermost position within the lower portion 39 of the receptacle 20, such that the lower valve 47 closes the discharge port 41, and such that the upper valve 46 opens the inlet port 40. A predetermined measured or metered amount of drink mix (beverage or other fluid) 49 flows through the inlet port 40 past the upper valve 46, and into the lower portion 39 of the receptacle 20.

... The predetermined measured or metered amount of the drink mix 49 *flows by gravity* through discharge port 41 and into the jar 13 of the blender 12.

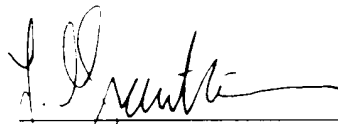
Col. 5, lines 51-67, and Col. 6, lines 1-3. It is clear that the Reese et al. "important feature" that utilizes a solenoid-actuated valve (visually similar to a toilet bowl plunger) which relies on a gravity feed for "precise portion control" is required for its device to operate as intended. It is likewise clear that attempting to modify Reese et al. to include a peristaltic pump would destroy the gravity flow and thereby destroy the device's ability to achieve "precise portion control" as disclosed in that patent.

Accordingly, the Examiner cannot properly modify Reese et al. as suggested. Applicant therefore respectfully requests the Examiner's rejection of claim 11 to be withdrawn.

Applicant has made a good-faith effort to resolve all matters with respect to the present application. Applicant believes that the claims, both those presenting originally claimed subject matter and those that have been amended, should now be in condition for allowance. Applicant respectfully requests a favorable action on the merits. If there are any matters yet to be resolved in connection with this application, Applicant requests the Examiner to telephone the undersigned attorney to expedite the handling of this matter.

Respectfully submitted,

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U. Grant Foster
Registration No. 33,236

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